

STATE OF CALIFORNIA
OFFICE OF THE ADJUTANT GENERAL
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Medical Services
INJURY AND DISEASE - LINE OF DUTY REPORTS

This pamphlet establishes policy and provides guidance for implementation and processing administrative requirements related to injuries, diseases and death for soldiers of the California Army National Guard.

The proponent of this pamphlet is the Director, Military Personnel (CAMP). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes of Publications and Blank Forms) directly to the Adjutant General, State of California, ATTN: CAMP-SB, 2829 Watt Avenue, P.O. Box 214405, Sacramento, California 95821-0405.

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CHAPTER 1 GENERAL

1-1. **PURPOSE.** This pamphlet is designed to provide guidelines for the administrative procedures, required documentation, and information for soldiers who incur duty related injury, diseases or death.

1-2. **RELATED PUBLICATIONS.** The procedures outlined in this pamphlet are current as of the date above. Policies, requirements, and procedures reflect those listed in the beginning of each chapter. Refer to Appendix G for listed references.

1-3. **APPLICABILITY.** This pamphlet applies to each member of the California Army National Guard (CA ARNG) on Federal Active Duty or Inactive Duty status except those soldiers on Active Guard and Reserve (AGR); Federal Technician employment status; and State Civil Service. This pamphlet also applies to members of the State Military Reserve on State Active Duty Status only.

- a. Active Guard and Reserve (AGR) refer to the AGR Standard Operating Procedures (SOP).
- b. Federal Technicians refer to the Federal Personnel Manual 810.
- c. State Civil Service members refer to CAL ARNGR 690-3, dated 11 Feb 87.

1-4. **RESPONSIBILITY.** The Office of the Adjutant General, Directorate of Military Personnel, Support Branch (CAMP-SB) has primary responsibility for administrative processing of all actions related to injury, diseases or death incurred by California National Guard members, except as listed in para 1-3 (A-C).

a. Unit commanders are responsible for reporting all incidents of injury, disease or death which occur during periods of training and related duty to the OTAG Emergency Operations Center as required in CAL ARNG 190-40.

b. Service members are responsible for meeting all requirements to include reporting to appropriate military medical facilities as directed. Failure to comply with the provisions of this and related regulations could result in the loss of benefits.

CHAPTER 2 REPORTING REQUIREMENTS

2-1. **GENERAL.** This chapter prescribes reporting requirements incident to the disease, injury, disability or death of a California Army National Guard soldier. Reference CAL ARNGR 190-40.

2-2. **REPORTING RESPONSIBILITY.** The unit commander or officer having administrative responsibility for soldiers who become ill, injured, disabled, or die will report by telephone through operational channels, to the Staff Duty Officer (SDO) or Emergency Operations Center (EOC), Office of the Adjutant General. The EOC 24 hour phone number is (916) 973-3441. This telephonic notification is referred to as a serious incident report (SIR).

2-3. **TYPES OF REPORTABLE INJURIES/DISEASE/DEATH.**

- a. Injury as a result of negligence or willful misconduct, including drugs and alcohol.
- b. Treatment by a civilian medical facility and/or active duty military medical facility.
- c. Treatment requiring follow-up care at a civilian or military facility.
- d. A medical condition diagnosed by a physician as causing disability or impairment.
- e. Medical condition that require confinement to the Troop Medical Facility (TMC) 12 hours or more while on federal or state status.
- f. Incidents requiring a line of duty investigation.
- g. Incidents while on State Active Duty (SAD) status for an emergency SAD mission.

CHAPTER 3 BENEFITS

3-1. **PURPOSE.** This chapter outlines the benefits authorized, source of entitlement and/or care and the reference for injured or ill soldiers of the California National Guard.

3-2. BENEFITS

BENEFIT	SOURCE OF ENTITLEMENT AND/OR CARE	REFERENCE
1. Treatment of injury/ disease incurred while under any Federal status	Federal incapacitation compensation and/or State Compensation Insurance.	NGR Pam 37-5, Sec 340 & Mil & Vet Code
	Army expense, Army or Federal Facility, Civilian Facility in emergency.	Para 4-2, AR 40-3, Para 6 NGR 40-3
2. Glasses, dental or artificial limbs or devices	Army Expense, Federal Facility in course of treatment of injuries, or when lost, damaged or destroyed. Not the result of negligence or misconduct. May go to Civilian Facility with prior approval of NGB and statement of urgency from unit commander.	Para 5e, NGR 40-3
3. Transportation to and from treatment	Unit vehicles or TR, Army Expense (CAL FORM 40-6-1)	JTR Para M6005, Para 5-6, NGR 37-104-2
4. Pay and allowances during hospitalization or disability.	Federal incapacitation compensation.	DOD Pam, Tbl 8-2-4
	1. Old Law-Injury incurred before 16 Nov 86.	Para 4-2, AR 40-3, Chap 5, NGR 37-104-2, NGB Pam 37-5
	2. Public Law-99-661 injury/disease incurred between 16 Nov 86-29 Sep 88.	NGR Pam 37-5, CAL Pam 40-2
	3. Public Law-100-456 injury/disease incurred on or after 30 Sep 88.	CAL Pam 40-2, Chap 5
	State Compensation Insurance (Not pay & allowances).	See 340 & 341

BENEFIT	SOURCE OF ENTITLEMENT AND/OR CARE	REFERENCE
5. Reemployment rights after disability.	State and Federal Labor Codes.	Sec 394, CAL MIL & Vet Code
6. Disability Retirement	Federal Government and/or State.	AR 635-40, Para 10, NGR 40-3, Sec 340 & 341, Mil & Vet Code, Chap 8 AR 635-40
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7. Death Benefits	Federal Government and/or State	See CAL ARNGR 600-10

CHAPTER 4 LINE OF DUTY (LOD)

4-1. **PURPOSE.** This chapter prescribes procedures for investigating the circumstances under which the injury, disease or death of a member was incurred. It also provides considerations in determining line of duty (LOD) status. Further, this chapter establishes required documents and administrative procedures for processing line of duty investigation.

4-2. **APPLICABILITY.** This pamphlet applies to each member of the Army National Guard (ARNG) who incurs an injury or disease in LOD while performing authorized training. An LOD investigation is also required in deaths that occurred while in a training status, or traveling to or from duty.

4-3. **IMPORTANCE OF LINE OF DUTY ACTIONS.** LOD determinations are used to decide entitlement to a member for benefits administered by the Department of the Army. The facts determined in the investigation may also assist the Veterans Administration and state and local agencies in deciding the individual's entitlement to benefits under the programs which they administer.

4-4. **AUTHORITIES, DUTIES AND RESPONSIBILITIES.**

a. Chief, National Guard Bureau is the final approving authority for all formal LOD's.

b. The California State Adjutant General is the reviewing authority for all cases. The Adjutant General (TAG) may also act as the final approving authority for informal determinations.

c. The Unit Commander or officer having administrative responsibility for the member concerned will:

(1) Insure that each soldier understands the requirement to report injuries and diseases incurred with incident to training and understands the benefits which may be authorized.

(2) Take prompt action to investigate the LOD status of each member incurring a injury or disease incident to training.

(3) Insure that a determination is obtained from the treating physician on the DD Form 2173, Section 1 (to include signature).

(4) Submit all documents required to assist in a final determination as listed in this pamphlet. (Refer to para 4-7 thru 4-11).

(5) Ensure that all documents submitted are factual and administratively correct; that the period of injury is consistent with those periods of duty actually performed by the injured or diseased soldier.

(6) In the case of a formal investigation, assist the investigating officer in obtaining information.

d. Soldiers who incur injuries or diseases incident to training will promptly notify their unit commander or the officer having administrative responsibility.

e. Administrative personnel and other unit personnel involved in the preparation of a line of duty report are responsible for the prompt and accurate accomplishment of required actions. CAL ARNG Form 40-2 will be completed and utilized to forward all required documents.

4-5. TYPES OF LINE OF DUTY INVESTIGATIONS.

a. Administrative LODs are only required to be forwarded to the office of the Adjutant General (OTAG) if there is a civilian medical bill. If there is no civilian medical treatment, administrative LOD reports should be filed in the official Military Personal Records Jacket (MPRJ).

(1) Administrative LODs must not contain evidence of misconduct, neglect, AWOL or prior injury. (Refer to Formal Line of Duty, para 4-10).

(2) An administrative LOD covers treatment which is completed during the duty period only. Treatment or disability after the training period must be considered in an Informal Line of Duty. (Refer to Informal LOD, para 4-9).

b. Informal Line of Duties are required if there is treatment or disability following the training period and there is no evidence of misconduct, neglect, AWOL or death.

c. Formal Line of Duties are required for the following reasons:

- (1) Injury or disease incurred not in line of duty (or not in a duty status).
- (2) Injury as result of misconduct or gross negligence.
- (3) Injury or disease which occurred during unauthorized absence.
- (4) Suicide attempt or other mental, psycho-neurotic or personality disorder.
- (5) Injury or disease that existed prior to service, aggravated by service.
- (6) Medical condition that may result in permanent disability.
- (7) Any condition that resulted in death.
- (8) Disease condition.
- (9) While traveling to or from training to home stations.
- (10) As directed by OTAG.

4-6. ADMINISTRATIVE LINE OF DUTIES REQUIREMENTS.

a. Administrative LOD is only required to be forwarded to the Office of The Adjutant General (OTAG) if there is a civilian medical bill. If there is no civilian medical treatment, LOD should be filed in official MPRJ. Administrative LOD is appropriate when treatment is completed during the duty period with no additional treatment required following the duty period.

b. Refer to paragraph 4-10, Formal Line of Duty if evidence of misconduct, neglect, AWOL or prior injury is present.

c. Refer to paragraph 4-9, Informal Line of Duty if treatment or disability continues beyond the training period.

4-7. REQUIRED FORMS TO COMPLETE AN ADMINISTRATIVE LINE OF DUTY. CAL ARNG Form 2173 Statement of Medical Examination and Duty Status. (Reference Appendix A).

- a. Section 1 - Completed and signed by the treating physician or hospital administrator.
- b. Section 2 - Completed and signed by the unit commander or administrative officer.
- c. Medical treatment records.
- d. Training schedule/orders.
- e. DA Form 2823 for member/witness(es)

4-8. INFORMAL LINE OF DUTY REQUIREMENTS. Informal LODS are only required if there is treatment or disability following the training period. An informal LOD is not appropriate if there is evidence of misconduct, neglect or AWOL. Incapacitation payroll is forwarded with the Informal and Formal Line of Duty when soldier is incapacitated beyond the training period.

4-9. REQUIRED FORMS TO COMPLETE AN INFORMAL LINE OF DUTY. (Reference Appendix B).

- a. CAL ARNG Form 2173, Statement of Medical Examination and Duty Status.
- b. DD Form 2823, Sworn Statement. Use for both injured soldier and witness statements. Statements do not require soldiers to be sworn or advised of their rights. (Refer AR 600-8-1 para 400-3c 1-2).
- c. Medical treatment records from both civilian and military medical facilities as appropriate.
- d. Documentation that reflects the duty period and status at the time of the injury or disease. (i.e. Annual Training orders or IDT Training Schedules).
- e. Other documents as required which assist in the determination of eligibility for benefits. Example: accident reports, physicals, etc.

4-10. FORMAL LINE OF DUTY INVESTIGATION.

a. A Formal Line of Duty investigation is required when there is evidence that the injury or disease is:

- (1) Incurred not in the line of duty or not in a duty status.
- (2) A result of misconduct or gross negligence.
- (3) Incurred during unauthorized absence.
- (4) A suicide attempt or related to mental, psycho-neurotic or personality disorder.
- (5) An injury or disease that existed prior to service, and aggravated by service.
- (6) A medical condition that may result in permanent disability.

- (7) A condition that resulted in death.
- (8) Caused by a disease condition.
- (9) Incurred traveling to or from training to home station.
- (10) As directed by OTAG.

b. The senior command will appoint an investigating officer on orders.

4-11. REQUIRED FORMS TO COMPLETE A FORMAL LINE OF DUTY INVESTIGATION. (Reference Appendix C).

- a. Order appointing investigating officer.
- b. DD Form 261, Report of Investigation.
- c. CAL ARNG Form 2173, Statement of Medical Examination and Duty Status.
- d. DD Form 2823, Sworn Statement. Use for both injured soldiers and witness statements. (Refer AR 600-8-1 Para 40-3c 1-2).
- e. Medical reports (Military/Civilian medical facilities as appropriate).
- f. Rights warning procedures/waiver certificate DA Form 3881. (Only if member is suspected of any offenses, misconduct or drug and alcohol use).
- g. Accident/Police Report (if applicable).
- h. Documentation that reflects the duty period and status at the time of injury or disease. (i.e. Annual Training Orders or IDT Training Schedules).
- i. Adverse letter if found not in line of duty (refer AR 600-8-1 figure 40-5 exhibit K)

4-12. JAG REVIEW. All completed formal investigations must have a Judge Advocate General (JAG) review. JAG reviews will be coordinated by the Support Branch, OTAG, for the purpose of:

- a. Determination of whether legal requirements have been complied with.
- b. Ascertain if any errors exists and if so, whether such error has a material or adverse effect on any individuals rights.
- c. Determine whether the findings of the investigation are supported by substantial evidence or lack of it.
- d. Examine the investigation to see if potential claims may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims.

4-13. APPROVAL. All LOD investigations must be routed through the next higher command. The Battalion Administrative Officer or senior full-time supervisor will certify for accuracy and completeness using transmittal form CAL ARNG 40-2.

CHAPTER 5 INCAPACITATION (INCAP) PAYROLL

5-1. **PURPOSE.** This chapter prescribes the procedure for initiating an incapacitation payroll. In addition, it explains the public laws that govern the granting of incapacitation pay and describes the criteria and forms needed to submit a complete incapacitation payroll.

5-2. **APPLICABILITY.** This chapter applies to Army National Guard M-Day soldiers who are incapacitated beyond the training period. The injury or disease must have been found to be in the line of duty.

5-3. **PUBLIC LAWS.** There are three Public Laws that have been enacted by Congress that govern the awarding of incapacitation pay depending on the date of injury.

a. The "Old Law" - Pertains to injuries received on/or before 16 November 1986. The soldier is paid full military pay and allowances, regardless of civilian job status.

b. Public Law 99-661 - Includes injuries incurred between 17 November 1986 - 29 September 1988.

(1) Soldier must have incurred a loss of income. The burden of proof is with the soldier. Soldier can receive compensation for loss of non-military income up to full military pay and allowances.

(2) Unemployed soldiers receive Drill pay only.

c. Public Law 100-456 - Pertains to injuries from 30 September 1988 to present, as follows:

(1) If an unemployed soldier found unfit for military duty by a doctor is eligible for full military pay and allowances per rank and PEBD.

(2) If a soldier is found unfit for military duty by a doctor but is able to work at his/her civilian job, he/she receives full military pay and allowances per rank and PEBD minus any earned income from his/her civilian job (Drill pay is not authorized if civilian income exceeds full military pay and allowances). Earned income is defined as "income from salaries, wages, business profits, commissions, tips and unemployment compensation."

(3) If a soldier is found fit for military duty by a doctor but is unable to work at his civilian job, he/she receives incap pay for his loss of civilian income up to full military pay and allowances per his rank and PEBD.

(4) An unemployed soldier who is determined fit for military duty by a doctor in his MOS duties and requirements but is still not medically cured 100% does not receive incapacitation pay.

5-4. **INCAPACITATION PAYROLL FORMS REQUIRED.** Initial request for incapacitation pay should accompany the LOD. Subsequent request for incapacitation pay should be made every 30 days. (Reference Appendix D).

a. CAL NG Form 37-2C: Request for Approval for Incapacitation Pay.

b. CAL ARNG Form 37-9: ADAPS Payroll Certificate. (each payroll).

c. CAL NG Form 40-6-2: Disability Statement. A new CAL ARNG Form 40-6-2 must be included in every payroll. The soldier must continue to go to the military physician every month.

d. CAL NG Form 37-D: Disability Counseling Statement. This statement outlines the responsibilities and requirements of the soldier who receives incapacitation pay. After the soldier has read and signed the disability counseling statement, he should be provided with a copy for his records. (Required with the initial payroll only).

e. CAL NG Form 37-2E: Employer Statement. A new employers statement must accompany each new payroll submitted to OTAG. It must be signed and dated by the employer. If employee has received any sick leave or annual leave, the dates received will be included on the form. (If the soldier is self-employed CAL NG Form 37-2F Self-Employed Statement will be substituted).

f. Check Stubs: Include a copy of the last two check stubs from the soldier. (Required with the initial payroll only).

g. CAL NG Form 37-2H: Soldier Claim Form. Must be completed and signed each month.

h. CAL ARNG Form 40-2 (Appendix) will be utilized to transmit all incapacitation payrolls to Support Branch, OTAG for necessary action.

5-5. **OTHER DOCUMENTS.** The first incapacitation payroll submitted to OTAG will include the CAL NG Form 37-D, two check stubs and a copy of the military orders or IDT Training Schedule, Certificate of Training, RMA, or SUTA.

5-6. **APPROVALS.** There are three levels of approval for incapacitation pay. The authority level depends upon the duration the soldier receives incapacitation pay.

- a. The first 90 days of paid incapacitation is approved by OTAG.
- b. The next 90 days of paid incapacitation is approved by National Guard Bureau (NGB).
- c. For all cases beyond 180 days, HQ, Department of the Army approval is required.

5-7. **Payroll Processing.** A completed incapacitation payroll will be reviewed and authorized by Support Branch, OTAG and forwarded to the United States Property and Fiscal Office (USPFO) for processing. USPFO forwards the payroll to the U.S. Army Finance and Accounting Office for payment. The actual check is issued from the Presidio of San Francisco and sent directly to the individual.